

January 27, 2003

**Village of Croton-on-Hudson
Village Board of Trustees
Statement of Findings
Regarding Renewal of the Special Use Permit for
Metro Enviro Transfer LLC – Croton-on-Hudson Waste Transfer Station**

Pursuant to the Village of Croton-on-Hudson Zoning Code (“Village Code”) Section 230-56 and other applicable authority, the Village Board of Trustees makes the following findings regarding Metro Enviro Transfer LLC – Croton-on-Hudson Waste Transfer Station (“the Facility”):

I. Background

In 1984, the land on which the Facility is located (“the Site”) was purchased by Robert V. Liguori. He proposed to change the operations on the Site from materials storage to wood processing and recycling. Subsequently, the Zoning Board of Appeals determined that the use of the Site had changed from one nonconforming use to another. Under what is now Village Code § 230-53A.(2), this triggered the need for a special use permit from the Village Board. A special use permit allowing wood processing and recycling was applied for and granted in 1988 to Industrial Recycling Systems, a company owned by Mr. Liguori. Since then, operations at the Site have been carried out subject to various special use permits with various conditions.

In late 1994, Mr. Liguori applied to New York State Department of Environmental Conservation (“DEC”) for modification of the applicable solid waste management permit in order to expand the range of construction and demolition debris (“C&DD”) that could be accepted from only materials attached to wood waste to a broader range of C&DD. In early 1995, Mr. Liguori applied for modification of the site plan and to increase the amount of material that could be processed. The application named Harmon Recycle & Rail in place of Industrial Recycling Systems. The Planning Board undertook a land use analysis and SEQRA analysis of the application and held public hearings on the application in June 1995. In July 1995, the Planning Board, as lead agency, adopted a negative declaration under SEQRA with respect to the application and approved the modified site plan.

In 1995, because Mr. Liguori was continuing to accept material but failing to timely ship it offsite, large amounts of material accumulated on site in violation of the DEC permit and the Village special use permit. In February 1996, Mr. Liguori entered into a consent order with DEC that required remediation of on-site conditions, including removal of the stockpiled materials, and payment of a \$35,000 fine. At the same time, DEC granted the permit modification Mr. Liguori had applied for in 1995. In May 1996, the Planning Board approved an amendment to the site plan, with an accompanying negative declaration under SEQRA, to permit the construction of a concrete retention pad pursuant to the DEC Consent Order as well as other proposed changes. In December

1996, DEC issued another notice of non-compliance based on Mr. Liguori's failure to remove the stockpiled materials. At the same time, Metro Enviro LLC offered to purchase the property and remedy all existing violations, as well as perform the site work necessary to bring the Facility into compliance with the DEC Consent Order and existing site plan.

In Spring 1997, Greentree Realty LLC purchased the Site from Mr. Liguori and granted a lease to Metro Enviro LLC. The latter remedied the violations, and applied for a DEC Part 360 permit to operate a C&DD transfer station on the Site. In August 1997, Metro Enviro LLC requested renewal and transfer of the special use permit to itself from Industrial Recycling Systems. The Village Board referred the request to the Planning Board for review in September 1997. In November 1997, DEC issued a Part 360 permit to Metro Enviro LLC to operate a C&DD processing facility on the Site. DEC also imposed various special conditions on the Part 360 permit, including the funding of an environmental monitor for the Facility by the applicant as well as various recordkeeping and reporting requirements. On November 25, 1997, the Planning Board recommended to this Board that the special use permit be granted.

The Village Board undertook a SEQRA review of the special use permit application, the Mayor convened a citizens committee to review the application, and the Village Board held public hearing sessions on the Metro Enviro LLC special use permit application between December 15, 1997 and May 4, 1998. On May 4, 1998, this Board adopted a negative declaration under SEQRA with respect to the application and issued Metro Enviro LLC a new three-year special use permit, with conditions, including that the processing area be enclosed in a building, effective May 5, 1998. Metro Enviro LLC did not take legal action to challenge any of the terms of the new special use permit. In late 1998, Metro Enviro LLC obtained from the Zoning Board of Appeals a side yard area variance and obtained from the DEC a modification of the DEC permit to allow construction of a metal building above the processing pad, as well as installation of the rail spur. In January 2000, counsel for Metro Enviro LLC notified this Board of the contemplated sale of the lease to the Site to Metro Enviro Transfer LLC ("Metro Enviro Transfer"), a subsidiary of Allied Waste Industries, Inc. ("Allied"). In March 2000, Metro Enviro Transfer purchased the lease to the Site. Metro Enviro Transfer did not take any legal action to challenge any of the terms of the special use permit. The ownership of the land did not change.

Metro Enviro Transfer requested permission to increase the tonnage of incoming material per day from 850 tons to 1,000 tons. By letter dated May 12, 2000, signed by Mayor Robert W. Elliott, the Village denied this request based on multiple prior violations of the then-existing tonnage limits, and on falsification of records to conceal the violations, and "directed that the tonnage capacity remain at 850 tons per day for the balance of the permit period." The Village's letter stated, "The Village Board is aware that under Paragraph 40 of the permit, the permit holder's 'Failure to observe each and every condition contained' in the permit 'shall be grounds for a stop-work order and revocation of the permit.' Further, under Paragraph 41, the Village retains the right under the permit and Village Code to 'order cessation of operations in the event of repeated ... violations, as well as the right to assess monetary penalties.'" The letter concluded by

stating, “The Village is not invoking these latter remedies at this time, but reserves the right to do so upon further investigation and consideration. The Village also expects the permit holder to take the necessary steps to assure that violations of the tonnage limit of 850 tons do not recur and to demonstrate to the Village the steps that have been taken to this end.”

Metro Enviro Transfer made a timely request that the Village Board renew the special use permit in March 2001. Since that time, the special use permit has been extended thirteen times and its renewal has been discussed extensively in public at the following meetings of this Board: May 7, 2001; September 4, 2001; November 19, 2001; February 4, 2002; March 4, 2002; April 1, 2002; June 10, 2002; September 9, 2002; October 21, 2002; December 16, 2002; and January 15, 2003. The May 7, 2001 and January 15, 2003 meetings were officially noticed as public meetings at which all were allowed to speak. Representatives of Metro Enviro Transfer spoke at all of these meetings, except November 19, 2001. Members of the public spoke about the permit renewal on May 7, 2001, November 19, 2001, September 9, 2002, October 21, 2002, December 16, 2002 and January 15, 2003. A special meeting was held on January 15, 2003 to continue the public hearing on the issue. Representatives from Metro Enviro Transfer made a presentation in response to a draft of this Findings Statement and responded to questions, and members of the public gave their comments. At that time, all parties were notified that the Board would make its final decision on the matter at a special meeting to be held on January 27, 2003.

At the January 27, 2003 meeting Metro Enviro Transfer made another presentation and members of the public also expressed their views. All the information supplied by Metro Enviro Transfer, both orally and in writing, has been considered by the Board in making this decision. Unfortunately, Metro Enviro Transfer has still left unanswered many of the village’s questions. Metro Enviro Transfer has also refused to turn over to the Village full transcripts (or transcripts from which only legitimately proprietary and confidential information has been redacted) of the depositions taken by Walter Mack concerning the operations at the Facility, even though it appears that such transcripts would be pertinent to the issue of permit renewal.

II. Terms of the Special Use Permit

The special use permit governing operation of the Facility includes provisions limiting the type of waste that may be accepted at the Facility (§§ 1-2, 7), the permissible operations on site (§§ 3-6), the hours of operation (§ 31), the tonnage of material that may be processed on site (§§ 32-33), and certain physical improvements at the Site (§§ 35-38), among other items. The special use permit also requires that the Facility comply with all conditions, restrictions and limitations in the Facility’s DEC permit (§§ 18, 26), with the provisions of the Operation & Maintenance (“O&M”) Manual (§§ 19, 26), and with the performance standards of the Village Zoning Law (§ 20).

According to the minutes of the hearing on May 4, 1998, during his presentation urging the Board to grant the permit, Michael Zarin, Esq. counsel to Metro Enviro LLC, stated "if they [Metro Enviro] do not comply with their permit, they will be closed.

There are no ifs, ands or buts" and "[t]here is no comparison between this site and the Karta facility. If they look like Karta, they will be shut down immediately." The Board granted the permit shortly after hearing this reassurance from Mr. Zarin, a partner in the law firm (Zarin & Steinmetz) that currently represents Metro Enviro Transfer.

Paragraph 40 of the permit defines a procedure for revoking the permit if there is even a single violation of any permit condition. Under the sub-paragraph on stop work orders, the permit states that generally the permittee has five days to cure violations before work can be stopped, but no notice is required where "there are imminent hazards posed to the public health, welfare and the environment, such as acceptance by the applicant of toxic or hazardous waste or garbage or, . . . the applicant has received three notices to remedy violation under this permit." The next sub-paragraph, on suspension and revocation, states "[t]he Village Board may suspend or revoke this permit after a public hearing . . . where it finds that the permittee has not complied with any or all terms of this permit." As noted above, neither Metro Enviro LLC nor Metro Enviro Transfer has challenged these or any other provisions of the special use permit.

Paragraph 41 states that the Village "will retain all powers of enforcement available under paragraph 40 and the Village Code, including, but not limited to, the right to order cessation of operations in the event of repeated or uncured violations, as well as the right to assess monetary penalties."

Section 230-56 of the Village Code governs renewal of special use permits issued by the Village Board of Trustees. It provides:

The grant of a special use permit for the use indicated therein may be conditioned on periodic renewal, which renewal may be granted only following upon public notice and hearing. *Such renewal shall be withheld or granted subject to terms and conditions additional to or different from those in the original grant only upon a determination that:*

A. The factors which justified the original grant no longer exist or have changed sufficiently to require additional or different terms and conditions; or

B. *The terms and conditions of the original special permit have not been or are not being complied with, wholly or in part.* A notice of violation pursuant to § 230-81 shall be prima facie evidence of lack of conformity with such terms and conditions.

(Emphasis added).

In addition, Special Use Permit renewal is discussed under Article XII of the Zoning Code, which enumerates the powers and duties of the Board of Appeals. The

Board finds that in this case the provisions discussing Special Use Permit renewal in Article XII are not applicable, because jurisdiction over the renewal of this Special Use Permit rests with the Village Board of Trustees, not the Board of Appeals. None of the applicable sections of the Zoning Code or the Special Use Permit provide that a showing of damage to health, safety or the environment is necessary before the Village may revoke or refuse to renew the Special Use Permit.

III. Violations of the Terms of the Special Use Permit

Numerous violations of the special use permit have occurred since Metro Enviro Transfer, a subsidiary of Allied, assumed operation of the Facility in March 2000. These violations (to the extent that the Village is aware of them) are summarized below.

A. Receipt of Industrial and Municipal Waste

The special use permit and the DEC permit both prohibit the Facility from accepting industrial waste. Notwithstanding these prohibitions, on numerous occasions since Metro Enviro Transfer took control of the Facility in March 2000, industrial waste has been accepted there. This fact first came to light, not at the initiative of Allied, but due to the monitoring activities of Walter Mack, Esq., who was appointed by the Honorable Jed S. Rakoff of the U.S. District Court for the Southern District of New York in connection with the federal prosecution of certain solid waste management businesses purchased by Allied. Mr. Mack's investigations have revealed a number of ongoing violations of the state and local environmental laws at the Facility during the tenure there of Allied entities. A further report from Mr. Mack concerning the Facility is now expected.

Following Mr. Mack's revelations, Metro Enviro Transfer admitted that Facility personnel knowingly directed industrial waste from the Engelhard Corporation's Peekskill Films Plant to the Facility, and the Facility accepted this waste on at least 18 occasions between February 2, 2001 and March 19, 2001. Metro Enviro Transfer has also admitted that on, at minimum, 24 other occasions, including four times in 2002, mixed industrial and municipal waste from the Engelhard Corporation was processed at the Facility.

The Village Manager issued a Notice of Violation relating to the 18 loads accepted between February 2, 2001 and March 19, 2001 on August 9, 2002, shortly after the facts regarding those 18 loads were disclosed by Metro Enviro Transfer. The Board discussed the acceptance of those 18 loads of industrial waste and imposed a fine at its meeting on September 9, 2002. Metro Enviro Transfer explained at the meeting that Matt Hickey, then a General Manager of Allied, made arrangements for these loads to be taken to the Facility. Charles Marino, the site manager at the time, knew the loads were not C&DD and protested accepting the loads. Despite his protests, however, Mr. Hickey directed Mr. Marino to accept the loads. The loads were then processed with general C&DD.

After processing, the loads were shipped for disposal to the CLD Landfill, a C&DD landfill operated by BFI Corporation (an Allied subsidiary) at 9960 Southrange Road, Salem, Ohio 44460 under Bills of Lading that falsely identified the contents to be C&DD. Mr. Marino, the Site Manager at the time, signed the Bills of Lading, even though he knew that the waste was partially industrial waste.

Independent research by the Board's special counsel indicated that the CLD Landfill is only licensed to accept C&DD and that waste from Engelhard is classified as industrial waste under OHIO ADMIN. CODE § 3745-29-01 A. In a letter dated January 24, 2003, counsel to Metro Enviro Transfer admitted that the CLD Landfill was not permitted to accept industrial waste. Sending industrial waste from Engelhard to the CLD Landfill was a violation of the DEC permit (which requires waste from New York transfer stations to be disposed in a lawful manner, even if out of state) and, therefore, of the Village's special use permit (which incorporates the DEC permit by reference). A Notice of Violation was issued for this conduct on January 27, 2003. Nor was this the first time the CLD Landfill accepted unpermitted waste; on January 7, 2003, Allied supplied to the Village's special counsel Allied's Record of Compliance that was submitted to DEC in November 2000. This shows that the CLD landfill received three notices of violation for receiving non-permitted waste from October 1999 to June 2000.

The Board notes that counsel to Metro Enviro Transfer stated at the September 9, 2002 Village Board meeting that Mr. Hickey directed the industrial waste to go from the Facility in Croton-on-Hudson to another Allied operated transfer station in Mount Kisco in March 2001. Counsel also explained that Mr. Hickey's employment with Allied was terminated for cause in October 2001. At the January 15, 2003 public hearing, this representation changed, and the Board was informed by counsel for Metro Enviro Transfer that in fact Mr. Hickey was not terminated for cause. At the October, 2001 meeting, John DiNapoli, the regional engineer for Allied, stated that Allied owns a facility in Niagara Falls that could take such waste and did not contradict statements that the Mount Kisco facility was not authorized to take industrial waste. Representatives of the Village of Mount Kisco have confirmed that the transfer station there was, in fact, not authorized to accept industrial waste.

Though Metro Enviro Transfer had admitted to 18 improper shipments, at the September 9, 2002 meeting the Village Attorney pointed out that Allied had actually identified 23 shipments coming from Engelhard's Peekskill Films Plant, including one on January 2, 2002, and asked how Allied knew that the additional five were not industrial waste. Allied's counsel stated that the Mr. Mack had not identified these loads as industrial waste and "there are two sections to the facility, one of which has material that would potentially or likely be classified as industrial material. The other does not. To the best of Allied's information those other five loads are C and D or other non-industrial loads." Later Mr. Di Napoli stated that Allied believed these loads to be "C and D material." As discussed below, Metro Enviro Transfer's letter of December 2, 2002 states that five additional loads of mixed industrial and municipal waste came from Peekskill Films to the Facility, including one in 2002. The information supplied by Metro Enviro Transfer on January 24, 2003 shows that the dates and quantities of these shipments match exactly with the dates of the five shipments that Allied previously

contended were not industrial waste. It is thus apparent that the five loads that Allied claimed were C&DD at the September 9, 2002 meeting have now been identified as industrial and municipal waste.

In a letter to this Board of October 11, 2002, Metro Enviro Transfer's counsel stated "DEC has not cited Engelhard as a hazardous waste generator." In fact, a search of online databases of the United States Environmental Protection Agency has revealed that Engelhard's Peekskill Film Plant, where the first 18 loads of waste originated, is a conditionally exempt small quantity generator under the Resource Conservation and Recovery Act ("RCRA"), a federal statute governing storage, treatment and disposal of hazardous wastes. At the January 15, 2003 public hearing discussing the Draft Statement of Findings, counsel for Metro Enviro Transfer clarified that this statement was meant to convey that Engelhard had not been cited by DEC as a hazardous waste violator. According to the EPA compliance information website, the Engelhard plant in Buchanan, NY is listed as in violation of RCRA general requirements from October 21, 2002. In addition, according to news reports, on January 5, 2000, 1,000 gallons of titanium oxychloride, a yellow liquid that is corrosive and highly irritating to the eyes, spilled from a tank at the Engelhard plant on lower South Street, Peekskill.

On December 9, 2002, the Village received a letter dated December 2, 2002 from Metro Enviro Transfer that admitted that 24 loads of industrial waste had been shipped to the Facility from three Engelhard plants in addition to the 18 that had previously been disclosed. According to this letter, five of these 24 loads came from Peekskill Film, seven from Peekskill Pigment and 12 from the Ossining plant. Four of these additional loads were received in 2002 and 18 in 2001. Exact dates were not supplied by Metro Enviro Transfer at that time and the letter implies that the contents of the additional loads were not documented. Clarification of these points was requested from Metro Enviro Transfer, and on January 24, 2003, Metro Enviro Transfer supplied the Village with a redacted table indicating shipments to the Facility on the following dates (in addition to the 18 shipments previously identified): March 8, 2001 to May 1, 2001 (four shipments from Peekskill Film); January 2, 2002 (one shipment from Peekskill Film); April 26 to July 27, 2001 (five shipments from Peekskill Pigments); January 4 and March 13, 2002 (two shipments from Peekskill Pigments); June 12 and October 10, 2000 (two shipments from Ossining); January 9 to December 6, 2001 (nine shipments from Ossining); March 19, 2002 (one shipment from Ossining). Regulatory information available online shows that Peekskill Pigments is a large quantity generator of hazardous waste under RCRA and that the Ossining Plant filed a hazardous waste report with DEC in 1998. The Village issued a Notice of Violation for these loads on December 11, 2002. The table supplied by Metro Enviro Transfer indicates that, except for the 18 previously identified loads, all of the improper shipments were in open-top containers. It would have been much easier for Metro Enviro Transfer employees to identify improper shipments in open-top than in closed-top containers. Moreover, Metro Enviro Transfer's letter of January 24, 2003 to the Village states, without elaboration, that "Metro Enviro believes that the loads accepted by Metro Enviro may have been added to, subtracted from or processed before being shipped from the facility." The meaning and import of this statement are unclear.

Metro Enviro Transfer has obtained an affidavit from an employee of Engelhard that states in a general fashion that Engelhard did not provide Allied or its subsidiaries with hazardous wastes. The affidavit does not state what actually was contained in the loads that went to Metro Enviro Transfer. However, at the January 27, 2003 Board meeting, counsel for Allied Waste Industries admitted that the waste received included test tubes with residue from pigment testing. Unfortunately, at the January 15, 2003 meeting, Metro Enviro Transfer was unable to answer several questions the Board and its counsel had about the affidavit, and Metro Enviro Transfer did not bring the Engelhard official who signed the affidavit, or anyone else from Engelhard, to the January 15, 2003 meeting at which Metro Enviro Transfer presented the affidavit, and thus the Board has been unable to cross-examine the affiant. A number of questions remain about how the national Director of Environment, Health and Safety for a large corporation, who is apparently based in New Jersey as the affidavit was notarized in that State, could have personal knowledge about such matters. In addition, the Board notes that the affiant swore that Engelhard manages and disposes of hazardous waste in strict accordance with all applicable federal and state laws, but failed to mention the violation listed on the EPA website. The affidavit is found to have little probative value.

The nature of construction and demolition debris would make the receipt of certain kinds of unauthorized wastes especially problematic. On at least two recent occasions, the waste received at the Facility included pieces of equipment that caught fire on the tipping floor (a snow blower on September 23, 2002 and a small motor on January 16, 2003). In each case the fire was extinguished. In the case of the snow blower incident, the Croton Volunteer Fire Department was called to the scene to extinguish the fire. If nonconforming highly flammable waste materials had been present on the floor, it is not clear whether the firefighting efforts would have gone so smoothly. Indeed, one of the kinds of nonconforming waste that Metro Enviro Transfer accepted from Engelhard was plastic film that might have combusted if it had been there at the same time as the snow blower or the motor.

B. Other Violations

Capacity Exceedance and Record Falsification - At the Board meeting on June 18, 2001, Peter Lindemulder, Regional Vice President of Allied, admitted that the capacity limits set for the transfer station in the special use permit and the DEC permit were violated on 25 occasions between March 22, 2000 and August 21, 2000. Mr. Lindemulder also admitted that an employee at the Facility falsified the daily tonnage reports given to the Village by running the computer summary early if the tonnage for the day was approaching the daily limit established under the Village's special use permit, and booking the remaining loads to the next day.

At the Board meeting on February 4, 2002, counsel to Metro Enviro Transfer explained that the company would be entering into a consent order with DEC regarding recordkeeping errors, dust problems and tonnage overages. Counsel explained that the tonnage records kept at the loaders did not match the record of tonnage going into the Facility. On February 11, 2002, the Village Engineer issued a Notice of Violation for maintenance of inaccurate and unreliable tonnage records in 2000 and 2001 and

inadequate supervision to prevent unacceptable recordkeeping in violation of special use permit condition 34. A twenty-sixth violation of the capacity limit was disclosed in a letter to the Village from David Steinmetz, Esq. on February 28, 2002.

Stockpiling of Tires - In mid-2002, the Village became aware that Metro Enviro Transfer's practice was to store tires that were accepted at the Facility in a container until that container was full, in violation of special use permit paragraphs 1, 2, 3, 7 and 18, and DEC Permit Special Condition 16. The Village Manager issued a Notice of Violation on June 12, 2002, because tires are prohibited material under the Special Use Permit and Metro Enviro Transfer is required to promptly remove them from the property. Old tires are known to be a potential breeding ground for mosquitoes and other pests, as well as a potential fire hazard.

Failure to Provide All Required Training – As the Metro Enviro Transfer Facility's general manager testified at the January 15, 2003 hearing, "Training of employees is one of the absolute most important aspects of running a facility such as this one." Inspection of the training records of the Facility on November 26, 2002 revealed that some of the O&M Manual requirements with respect to training were not being observed. These requirements are incorporated into the special use permit by reference (§§ 19, 26). Specifically: i) no documentation of initial training was maintained at the Facility; ii) monthly safety meetings were not held in 20 of the 32 months that Allied has owned the Facility; iii) not all employees attended the monthly meetings that were held; iv) quarterly compliance training has only been held once in the 10 quarters that Allied has owned the Facility; and v) no training has been conducted by a New York certified asbestos inspector regarding recognition of waste potentially containing asbestos and contaminated soils. The Village Manager issued a Notice of Violation covering the lack of training on December 13, 2002. On December 18, 2002, Metro Enviro Transfer responded to the Notice of Violation of December 13, 2002 and proposed various remedies for the future.

A few other less serious violations have occurred since March 2000, when Allied took control of the Site. These are summarized in the following table, along with the violations discussed above.

Summary of Violations of the Special Use Permit from March 2000 to Date

<u>Violation</u>	<u>Provision Violated</u>	<u>Village Notice of Violation Sent and Fine Imposed</u>
Inadequate training and record keeping from March 2000 to date	Special use permit paragraphs 19 and 26. O&M Manual Section 4.5: Table 2 1); ¶ 2; Table 2 2); Table 2 3); and ¶ 3 b.	Notice of Violation issued on December 13, 2002. No fine to date.

<u>Violation</u>	<u>Provision Violated</u>	<u>Village Notice of Violation Sent and Fine Imposed</u>
Disposal of industrial waste to the BFI CLD Landfill in Ohio that was not authorized to accept it between 2000 and 2002.	Special use permit paragraph 18. DEC Special Permit condition 10(c), 16.	Notice of Violation issued on January 27, 2003. No fine to date.
Acceptance of 24 loads of unauthorized industrial waste between 2000 and 2002.	Special use permit paragraphs 1, 2, 3, 7 and 18. DEC Permit Special Condition 10(a) and (b). 6 N.Y.C.R.R. § 360-1.7.	Notice of Violation issued on December 11, 2002. No fine to date.
Storage of unacceptable material (vehicle tires) on site beyond the maximum allowable time (12 hours) from November 2001 to June 2002.	Special use permit paragraphs 1, 2, 3, 7 and 18. DEC Permit Special Condition 16. 6 N.Y.C.R.R. § 360-1.7.	Notice of Violation issued on June 12, 2002.
Processing and mishandling two refrigerators on the side of the tipping floor, which are unauthorized waste, on June 7, 2002.	Special use permit paragraphs 1, 2, 3 and 7. DEC Permit Special Condition 10(b). 6 N.Y.C.R.R. § 360-1.7.	No Notice of Violation issued. No fine imposed by Village. Violation noted in DEC Monitor's inspection report dated June 6, 2002.
Failure to collect leachate – rainwater observed coming into contact with material outside building and running to rail tracks without being collected in leachate collection tank. Reported March 30, 2001.	Special use permit paragraph 18 and 26. DEC Permit Special condition 19. 6 N.Y.C.R.R. § 360-1.7.	No Notice of Violation issued. No fine imposed by Village. Violation noted in DEC Monitor's inspection report dated March 30, 2001.
Acceptance of 18 additional loads of unauthorized industrial waste between February 2, 2001 and	Special use permit paragraphs 1, 2, 3, 7 and 18. DEC Permit Special	Notice of Violation issued on August 9, 2002. Fine imposed on September 9, 2002.

<u>Violation</u>	<u>Provision Violated</u>	<u>Village Notice of Violation Sent and Fine Imposed</u>
March 19, 2001.	Condition 10(a) and (b). 6 N.Y.C.R.R. § 360-1.7.	2002.
Annual report for 2000 was filed 29 days late in violation of Part 360 regulations.	Special use permit paragraphs 18 and 26. DEC Permit Special conditions 5 and 13. 6 N.Y.C.R.R. §§ 360-1.7, 360-16.4(i)(1).	No Notice of Violation issued. No fine imposed by Village. Violation noted in DEC Monitor's inspection report dated May 15, 2001.
Acceptance of tonnage in exceedance of limit specified on 26 occasions between March 22, 2000 and August 21, 2000.	Special use permit paragraphs 18, 26 and 34. DEC Permit Special condition 9. 6 N.Y.C.R.R. § 360-1.7.	Notice of Violation issued on February 11, 2002 for maintenance of inaccurate and unreliable tonnage records in 2000 and 2001, and inadequate supervision. No fine imposed by Village.

Thus, this Board finds that six Notices of Violation have been issued covering numerous violations of special use permit conditions since March 2000, when an Allied subsidiary took control of the Facility. In addition, at least four additional kinds of violations of the permit conditions have occurred during the same time period.

IV. Decision

The Facility is located in the Light Industrial LI District. On June 18, 2001, the law governing this district was changed so that a waste transfer station became a prohibited use, Village Code § 230-18 E. This means that the Village has decided that such a use is not compatible with the health, safety and welfare of the community. Notwithstanding this finding, this Board recognizes that non-conforming uses may be continued provided that they do not threaten the health and safety of the community and that they operate in compliance with their permits and other applicable requirements.

The Board has spent many hours hearing testimony about the Facility from Metro Enviro Transfer and from citizens. Several members of the Board have visited the Facility. Metro Enviro Transfer has been given every opportunity to submit oral and written evidence, and the Board has carefully considered all of this evidence. The Board has extended the initial three-year permit for over 20 months since its expiration to allow

Careful consideration of this application to renew the permit. While the special use permit gave the Board the authority to revoke the permit for just one violation, the Board has exercised restraint regarding this right in the face of numerous confirmed violations. At this time, however, the Board has gathered enough information to make a final decision.

The Board is particularly concerned with the knowing acceptance and processing of industrial and municipal waste. The Facility was sited, designed, built and operated as a transfer station for construction and demolition debris. C&DD is primarily solid material such as wood, pipes, bricks, cement, rebar, and the like. Because it is chemically and physically stable, and tends to have physically recognizable forms, it is less heavily regulated than municipal solid waste, hazardous waste or radioactive waste. The environmental laws impose less onerous controls on the handling, transfer and disposal of C&DD than that of these other materials.

At the January 15, 2003 Village Board meeting, Metro Enviro Transfer presented, as an alleged expert in solid waste management, Mr. Robert D. Barber, who has a BSE degree in civil engineering and, after three years in the public works department of the City of Farmington, New Mexico, spent fourteen years (1984-1998) with Waste Management, Inc., and since 1998 has served as a consultant to the country's three largest waste disposal companies. Mr. Barber testified orally (he did not submit a written report) that the permit violations at Metro Enviro Transfer did not cause injury to health, safety and the environment, and that the Facility has built-in safeguards to prevent such injury in the case of such violations. The Village subsequently retained the services of a leading environmental consulting firm, Malcolm Pirnie Inc. of White Plains, New York to evaluate Mr. Barber's statement and to render an independent opinion. Mr. Richard Brownell of Malcolm Pirnie has submitted an affidavit differing with Mr. Barber's assessment, and stating that the kinds of regulations that Metro Enviro Transfer violated were designed to protect health, safety and the environment, and that the integrity of the regulatory process depends on enforcement of these regulations without respect to whether damage to health, safety or the environment has occurred or can be proven to have occurred. The Board finds Mr. Brownell to be the more credible witness.

Industrial waste – waste materials from industrial operations – may take many forms; some of it may be hazardous and some may not. It is frequently impossible to discern from its physical appearance the degree, if any, of hazard it poses. It often comes from industrial operations that generate hazardous waste (though the hazardous waste is supposed to be segregated for separate handling).

Metro Enviro Transfer has claimed that the unauthorized receipt of industrial and municipal waste at the Facility from Engelhard was caused by Matt Hickey, whose employment with Allied affiliates was terminated for cause in October 2001. Metro Enviro Transfer also stated its belief that five later loads from the same source were not industrial or municipal waste. Despite this, these five later loads were recently acknowledged by Metro Enviro Transfer to be industrial and municipal waste, and 19 other loads of suspected industrial and municipal waste were identified, including some that were shipped in 2002 – well after Mr. Hickey left the company. Several of the plants

that are generating the waste loads are known generators of hazardous waste, but Metro Enviro Transfer states it does not know whether the industrial and municipal waste it accepted from these plants contained hazardous waste. The health and safety of residents of the Village of Croton-on-Hudson was placed in jeopardy by these multiple violations of the special use permit and of the DEC permit at a facility that is designed to accept only C&DD.

The Board is also concerned that Allied deliberately diverted this industrial and municipal waste to another transfer station (in Mount Kisco) that was not permitted to accept it, and disposed of it at a landfill (in Ohio) that was not authorized to take it, all in contravention of permit conditions and the laws of two states and at least two municipalities. Such deliberate serial disregard of permit conditions and governing law is intolerable.

The violations relating to lack of training are not merely technical transgressions. The training was designed, among other things, to ensure that Facility personnel would exclude unauthorized waste, and would otherwise fully comply with the special use permit.

The deliberate misreporting of daily tonnage figures in 2000 and the inability of the applicant to reconcile tonnage figures in 2001 is also a major issue. The capacity limit relates to the size of the Facility and to the volume of truck traffic that will travel to the Facility. Thus it is designed to protect the health and safety of the community.

At the January 15, 2003 hearing, Metro Enviro Transfer officials made a major point of saying that the compensation of top company officials was tied to permit compliance. However, they also admitted that they are not aware that anyone at Allied or at Metro Enviro Transfer has been penalized because of any of the violations that occurred at Croton.

A request by the Village for the release of the reports of the federal court monitor, Walter Mack, is currently pending before the United States District Court. The Village also asked Metro Enviro Transfer to turn over the exhibits to Mr. Mack's reports. Late the evening of Friday, January 24, 2003, Metro Enviro Transfer did make available to the Village's Special Counsel certain of these exhibits, including excerpts that Metro Enviro Transfer selected from the transcripts of depositions that Mr. Mack had taken. The pages that Metro Enviro Transfer chose to turn over predominantly concerned its past falsification of tonnage records; little or no discussion in these depositions relating to the industrial and municipal waste violations was made available to the Village, even though Mr. Mack has stated that depositions have been taken regarding these violations.

This Board finds that since March 2000, when Metro Enviro Transfer took over the Facility, the terms and conditions of the special use permit have been violated on multiple occasions and in numerous ways. Metro Enviro Transfer has repeatedly offered words of assurance to this Board that, while the Facility did not comply in the past, it will comply in the future. Further violations have all too frequently negated the effect of those assurances. The Board has reached the point where it can no longer rely on the

present assurances of Metro Enviro Transfer that things will improve in the future. A constant stream of violations – some of them disclosed only because of the ongoing investigation of the federal court monitor – establish that, after almost three years, Metro Enviro Transfer and its parent company, Allied, have not established either the mechanisms or the culture required for environmental compliance. At the January 15, 2003 hearing, the latest in a series of general managers for the Facility – brought on just a month earlier – testified that he had been hired “to create a culture of safe environmentally compliant and healthy and efficient operations.” While that is a laudable goal, it is too late. Allied has had nearly three years to create such a culture, and, as the string of violations demonstrates, it has failed. The time has come for the Village Board to take decisive action to fulfill its duty to protect the health and safety of the community. Metro Enviro Transfer should not be able to postpone the day of reckoning by delaying the production of requested materials or by pledging to do what it has repeatedly promised and failed to do in the past.

In accordance with Section 230-56 of the Village Code and Paragraph 41 of the Special Use Permit, the Board declines to grant any further extensions of the existing permit or grant the current application for renewal of the permit. The Special Use Permit will terminate effective February 17, 2003. The Board authorizes the Facility to operate until February 17, 2003. The Facility is ordered to cease accepting waste at midnight on that day.

On February 1, 2003, Metro Enviro Transfer LLC shall commence closing the Facility in accordance with the closure plan approved under the DEC permit. All waste shall be removed from the facility by 5:00 p.m. on February 24, 2003. The Facility shall be fully secure at all times to prevent illegal dumping.

This decision is issued not only under the Board's powers under the Village Code and the Special Use Permit, but also pursuant to the Board's powers and duties under N.Y. Municipal Home Rule Law Sec. 10, N.Y. Village Law Secs. 4-412, 7-725-b, 7-700, and 7-704, N.Y. Environmental Conservation Law Sec. 8-0103, and any other authorities which imbue the Board with the power to protect public health, safety and the environment.